

# OFFICE OF THE ATTORNEY GENERAL

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*Correction*

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Honorable Robert G. Britton  
Commissioner  
Alabama Board of Corrections  
101 South Union Street  
Montgomery, Alabama 36130

Prison and Prisoners -  
Public records and Inmates' records

1. The Privacy Act of 1974 and the Freedom of Information Act do not apply to a state correctional institution.
2. Information (e.g., psychological evaluations, disciplinary, etc.) in a state inmate's record is not a matter of "public record".
3. In the absence of a court order, persons or agencies other than criminal justice types should receive only conviction information from inmates' files.

Dear Commissioner Britton:

Reference is made to your request for an opinion from the Attorney General as to the following matter:

" Our Information Office is constantly asked to provide information regarding inmates who are presently incarcerated or who have been incarcerated in the past by the State of Alabama. We are generally receptive to accommodating media requests regarding an inmate's record and would like to continue this practice. However, some questions have arisen as to the kind of

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information we may release under the Privacy Act and at the same time be in compliance with the Freedom of Information Act.

We would appreciate an opinion on this matter from your office. In supplying this to us, it would also be necessary that we clearly understand what constitutes 'public record.' Since we are required to keep certain data on an inmate in his file (for example: psychological evaluations, letters of inquiry regarding the inmate, records and details of disciplinaries), would these documents be considered public record?"

It is my opinion that the major portion of the Privacy Act of 1974 applies to Federal agencies and does not apply to a state correctional institution housing state prisoners. The Legislative History of the Privacy Act of 1974 reads as follows:

"PURPOSE...It is designated to prevent the kind of illegal, unwise, overbroad, investigation and record surveillance of law-abiding citizens produced in recent years from actions of some overzealous investigators, and the curiosity of some government administrators, or the wrongful disclosure and use, in some cases, of personal files held by Federal agencies." [Emphasis added]

Likewise, the major portion of the Freedom Of Information Act applies to Federal agencies and not to a state correctional institution. In part, the introductory portion of the Legislative History of the Freedom Of Information Act reads as follows:

"H.R. 12471 [the bill number assigned to the Freedom Of Information Act prior to its becoming law] seeks to strengthen the procedural aspects of Freedom of Information Act by several amendments which clarify certain provisions of the Act, improve its administration, and expedite the handling of requests for information from Federal agencies in order to contribute to the fuller and faster release of information, which is the basic objective of the Act." [Emphasis added].

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Code of Alabama 1975, §41-13-1 defines "public records" as follows:

"As used in this article, the term 'public records' shall include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer."

Alabama does not have a statute which specifically states whether "prisoners' records" are "public records", nor who should have accessibility to those records. Code of Alabama 1975, §14-3-7 does state:

"In the office of the board of corrections shall be kept a book or books in which shall be kept a record of all state and county convicts, showing the date of conviction, crime, sentence, county and court in which convicted and such other information as the board may prescribe. There shall also be kept such other books as the board may deem proper."

The 5th Circuit Court of Appeals (in Tarlton v. U.S., 430 F.2d 1351 (5th Cir. 1980)) has held that prison records are not subject to inspection by the public:

"As the District Court held, prison records of inmates are confidential and are not subject to inspection by the public nor the inmate concerned. Cook v. Willingham, 10 Cir. 1968, 400 F.2d 885."

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It should be noted that "prison files/records" are those which are kept in the normal course of prison business and are used primarily for the benefit of the prison system. Accordingly, such files/records would normally not be available to the inmate, nor anyone else outside the prison system. The exception would be where it is determined through proper discovery methods that the inmate's need outweighs any benefit which would inure to the prison system for keeping the files/records confidential. Bogard v. Cook, 60 F.R.D. 508 (N.D. Miss. 1973). Thus, in the absence of a court order directing access, persons or agencies other than criminal justice types (including the inmate's attorney) should receive only conviction information from an inmates' files/records.

If our office can be of further assistance, please do not hesitate to call on us.

Sincerely,

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Attorney General

By

  
MILTON E. BELCHER  
Assistant Attorney General

MEB/dwm